

FILED**APRIL 23, 2007**KAREN MITCHELL
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

RICHARD BURTON PALMER, JR., PRO SE,	§	
TDCJ-CID # 01308979	§	
Previous TDCJ-CID # 00395016 01308979	§	
Previous TDCJ-CID # 00920607 01308979	§	
	§	
Plaintiff,	§	
	§	
v.	§	2:06-CV-0357
	§	
DAVID T. SCOTT,	§	
	§	
Defendant.	§	

ORDER OF DISMISSAL

Plaintiff RICHARD BURTON PALMER, JR., proceeding *pro se* and while a prisoner in the custody of the Texas Department of Criminal Justice, Correctional Institutions Division, has filed suit pursuant to Title 42, United States Code, section 1983 complaining against the above-named defendant and was granted permission to proceed in forma pauperis.

On April 9, 2007, a Report and Recommendation was issued by the United States Magistrate Judge analyzing plaintiff's claims pursuant to Title 28, United States Code, sections 1915A and 1915(e)(2) and recommending dismissal with prejudice for failure to state a claim on which relief can be granted.

Plaintiff filed his Objections on April 18, 2007. By these Objections, in relevant part, plaintiff asks if his cause is dismissed, that it be dismissed without prejudice. Plaintiff also requests that counsel be appointed and that he be granted an extension of thirty days in which to "prepare a proper brief," by which it appears plaintiff wishes to amend his complaint.

A *pro se* complaint generally should not be dismissed for failure to state a claim without giving the plaintiff an opportunity to amend; however, plaintiff has been afforded such an

opportunity by the fourteen-day response period for objections. He has not amended, and it does not appear any amendment of his claims against the named defendant could state a claim on which relief can be granted. No error is committed if the court determines the plaintiff has alleged his best case. *Bazrowx v. Scott*, 136 F.3d 1053, 1054 (5th Cir. 1998). Further, if the court determines that the complaint at hand alleges the plaintiff's best case, there is no need to remand for a further factual statement from plaintiff. *Jacquez v. Procunier*, 801 F.2d 789, 792 (5th Cir. 1986). Plaintiff has had a fair opportunity to state his case and a cause has not been established. Instead, the facts provided by plaintiff show he has plead himself out of court by suing a defendant who was not a state actor and by requesting relief which cannot be obtained through a civil rights lawsuit.

The Court has made an independent examination of the records in this case and has examined the Magistrate Judge's Report and Recommendation, as well as the objections filed by the plaintiff.

The Court is of the opinion that the objections of the plaintiff should be OVERRULED and the Report and Recommendation of the United States Magistrate Judge should be ADOPTED by the United States District Court, as supplemented herein.

This Court, therefore, does OVERRULE plaintiff's objections, and does hereby ADOPT the Report and Recommendation of the United States Magistrate Judge, as supplemented herein.

IT IS THEREFORE ORDERED that, pursuant to Title 28, United States Code, sections 1915A and 1915(e)(2), the Civil Rights Complaint filed pursuant to Title 42, United States Code, section 1983, by plaintiff RICHARD BURTON PALMER, JR., is DISMISSED WITH PREJUDICE FOR FAILURE TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

All pending motions are DENIED.

The Clerk will mail a copy of this Order to the plaintiff, and to any attorney of record by first class mail. The Clerk will also mail a copy to TDCJ-Office of the General Counsel, P.O. Box 13084, Capitol Station, Austin, TX 78711 and to the Pro Se Clerk at the U.S. District Court for the Eastern District of Texas, Tyler Division.

IT IS SO ORDERED.

ENTERED this 23rd day of April, 2007.

/s/ Mary Lou Robinson
MARY LOU ROBINSON
UNITED STATES DISTRICT JUDGE